

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATES:

May 31 and June 2, 2006

**SUBJECT MATTER OF
PROPOSED REGULATIONS:**

Lamp and Brake Inspections, Adjustments and Certifications;
Stations and Adjusters

SECTION AFFECTED:

Article 2 (commencing with § 3305), Article 3 (commencing with § 3315), and Article 4 (commencing with § 3320) of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations

UPDATED INFORMATION:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The proposed regulatory action will establish, in regulation, the specific inspection, adjustment and repair procedures that must be followed before a brake or lamp certificate may be issued by incorporating the Bureau's manuals. It will specify that, for purposes of the issuance of a certificate of compliance or adjustment, all adjustments, inspections, servicing and repairs of lamp and brake systems shall be performed at official stations and by official adjusters. It will also provides a list of the standards, in order of precedence, to be followed in the performance of adjustments, inspections, servicing and repairs of lamp and brake systems. This will help to ensure vehicle owners' confidence that their vehicles have been inspected, adjustments have been made and any necessary repairs have been performed to validate that their vehicles' lamps and brakes are safe, comply with VC requirements and meet vehicle manufacturers' specifications. This is consistent with the Bureau's principal mandate to protect the interests of the public¹.

This action is also intended to provide stations and adjusters with clear written criteria that they know must be followed before a certificate of compliance or adjustment may be issued. It would inform them, in advance, that failure to comply could result in an enforcement action.

Finally, the proposed action is intended to make compliance easier for the Bureau to assess and

¹ Section 9880.3 of the Business and Professions Code mandates that the protection of the public shall be the highest priority of the Bureau in exercising its licensing, regulatory, and disciplinary functions. Further, that whenever the protection of the public is inconsistent with other interests sought to be promoted the protection of the public shall be paramount.

achieve. This would facilitate enforcement and dispute resolution, when necessary.

This proposal makes changes to existing regulations found in Articles 2, 3 and 4 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

Article 2. Licensing of Official Stations and Adjusters:

1. Section 3305 is amended to require that, for purposes of the issuance of a certificate of compliance or adjustment, all adjustments, inspections, servicing and repairs of lamp and brake systems be performed at official stations and by official adjusters. The amendment also provides a list of the standards, in order of precedence, to be followed in the performance of adjustments, inspections, servicing and repairs of lamp and brake systems, as follows:
 - Vehicle Manufacturers' current standards, specifications and recommended procedures, as published in the manufacturers' vehicle service and repair manuals.
 - Current standards, specifications, procedures, directives, manuals, bulletins and instructions issued by vehicle and equipment or device manufacturers.
 - Standards, specifications and recommended procedures found in current industry-standard reference manuals and periodicals published by nationally recognized repair information providers.
 - The Bureau's *Handbook for Brake Adjusters and Stations*, February 2003.
 - The Bureau's *Handbook for Lamp Adjusters and Stations*, February 2003.

In addition, the February 2003 editions of the Bureau-published handbooks are incorporated by reference.

Other minor technical, grammatical, editorial or conforming changes are also made throughout this section. These changes have no regulatory effect.

2. Section 3306 is amended to correct and clarify references to the forms that are to be submitted to the Bureau when a licensee changes its business name or address, or when there is a change of ownership. The specific forms are identified and incorporated by reference.

Other minor technical, grammatical, editorial or conforming changes are also made throughout this section. These changes have no regulatory effect.

3. Additional minor technical, grammatical, editorial and conforming changes are also made in Sections 3307 through 3310. These changes have no regulatory effect.

Article 3. Official Lamp Adjusting Stations:

1. Minor technical, grammatical, editorial and conforming changes are made in Sections 3315 and 3316. These changes have no regulatory effect.

Article 4. Official Brake Adjusting Stations:

1. Minor technical, grammatical, editorial and conforming changes are made in Sections 3320 and 3321. These changes have no regulatory effect.

INCORPORATION BY REFERENCE:

The incorporation by reference in Section 3305 of the Bureau's *Handbook for Brake Adjusters and Stations*, February 2003, and *Handbook for Lamp Adjusters and Stations*, February 2003, is appropriate because to publish these documents in the California Code of Regulations (CCR) would clearly be cumbersome, unduly expensive, impractical and unnecessary. These documents consist of approximately 49 pages and 35 pages respectively. These documents are quite technical in nature and their composition makes them difficult to publish in the actual text of the regulation, as they contain various diagrams and forms. The manuals are used primarily by licensed lamp and brake adjusters as reference guides in the performance of lamp and brake inspections, adjustments, and repairs. These manuals mean little to the public in general since they are so technical in nature.

Stations and adjusters have ready access to the manuals since they are provided, free of charge, to every licensed lamp and/or brake station upon licensure. Adjuster license applicants also have access to the manuals through the Bureau's testing contractor, Experior. The Bureau's Licensing Division and mailroom, Experior and DCA's Consumer Information Centers all maintain a supply of handbooks to mail out when a candidate requests a copy. Additional copies of the manuals are also available to anyone, licensed or not. The manuals may be purchased from any Bureau field office, or ordered through the Bureau's Internet Web site (www.autorepair.ca.gov), at a nominal cost.

The incorporation by reference in Section 3306 of the *Change of Name/Address/Corporate Officers or Directors*, Form R-8 (Rev. 05/25/01) and the *Application for Station License*, Form R-4 (Rev 11/05); and in Section 3310 of the *Brake Adjuster or Lamp Adjuster Application*, Form Lic (Rev.8/00), is appropriate because to publish or print these forms in the CCR, in the text of a regulation, would clearly be cumbersome, impractical and unnecessary. To describe the forms in the regulation would require several pages of text, which would unnecessarily expand the CCR. Establishing the form and content of these applications is accomplished more simply and directly by incorporating them by reference.

All of these forms and applications are currently available online through the Bureau's Web site at www.autorepair.ca.gov. There is no need to describe or print these forms in the regulation since they are now and will continue to be available when required from Bureau field offices, by mail from the Bureau's Sacramento mail room or Licensing Division and on line, together with all the necessary instructions and information.

All of the manuals and forms proposed for incorporations have been available to all interested parties throughout the rulemaking process.

LOCAL MANDATE:

A mandate is not imposed on local agencies or school districts.

SMALL BUSINESS IMPACT:

This action will not have any adverse economic impact on businesses, including small businesses. This determination is based on the following facts or evidence/documents/testimony:

The proposed regulatory action will not have any adverse economic impact on businesses because licensed brake and lamp stations will not be required to do anything differently nor will they be required to obtain and/or use any tools, equipment, handbooks or manuals in addition to what is already required by Sections 3316 and 3321. The proposed regulatory action merely memorializes, in regulation, the brake and lamp inspection protocols routinely followed by the industry today.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This action does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following comments/objections/recommendations were made, either in writing or orally during the public comment period or at the public hearings, regarding the proposed action:

1. Marty Keller, Executive Director, California Automotive Business Coalition (formerly Automotive Repair Coalition), in oral testimony presented at the June 2, 2006 public hearing, and in a letter dated and received June 2, 2006, offered the following comments and recommendations:

- a. The Bureau of Automotive Repair (Bureau) has not demonstrated that these manuals actually conform to accepted trade standards. Business and Professions Code (B&P Code) section 9884.7 mandates the repairs regulated by the Bureau conform with “accepted trade standards for good and workmanlike repair in any material respect,” and

leaves, by implication, the establishment and maintenance of “accepted trade standards” to the trade itself, and not to the government.

This comment/recommendation was rejected, but for clarity the proposed action was modified to accommodate it, as follows:

The Bureau does not hold out its manuals to be or contain “accepted trade standards for good and workmanlike repair.” Both the *Handbook for Lamp Adjusters and Stations*, February 2003, and the *Handbook for Brake Adjusters and Stations*, February 2003, contain numerous references to following the instructions, specifications and procedures of vehicle manufacturers in performing inspections, adjustments and repairs. They also make reference to applicable provisions of the Vehicle Code and Title 13 of the California Code of Regulations regarding requirements for lighting and braking systems on motor vehicles.

For example, in the lamp-adjusting handbook, on page 9, it clearly states: “This handbook does not instruct or illustrate how technicians should adjust headlamps. Technology changes from year to year; therefore, technicians should refer to vehicle and aiming equipment manufacturers’ detailed headlight aiming instructions for specific vehicles.” This handbook also states that the California Vehicle Code contains the requirements for aiming multiple-beam lighting equipment², requires that headlamps illuminate an object at a specific distance³ and that a specific minimum voltage be supplied to the lamp⁴. The handbook goes on to discuss the methods of aiming, including the use of an “Aiming Screen,” “Mechanical Aimer,” “Optical Aimer” and “Vehicle Headlamp Aiming Device.” In the case of the “Mechanical Aimer” and “Optical Aimer,” the handbook states that they are to be used according to the manufacturer’s instructions. The “Vehicle Headlamp Aiming Device,” according to the handbook, is to be used in accordance with the vehicle owner’s manual or appropriate shop manual. If the licensed station chooses to use an “Aiming Screen,” the handbook also has suggestions on how to set up this screen to insure that lamps are in conformity with the applicable provisions of the Vehicle Code and Title 13 of the California Code of Regulations.

The brake-adjusting handbook, likewise, contains many similar references. For example, on page 21, it clearly states that a certificate “may not be issued to a vehicle unless it complies with” specific requirements of the Vehicle Code relating to parking brakes⁵, having brakes in good condition and in good working order⁶, and for controlling and stopping the vehicle⁷. There is also a reference to following the specific vehicle manufacturer’s service manual for the correct inspection, test and repair procedures for Anti-lock Brake Systems⁸.

² Vehicle Code section 22407.

³ Vehicle Code section 24407.

⁴ Vehicle Code section 24252

⁵ Vehicle Code section 26451.

⁶ Vehicle Code section 26453.

⁷ Vehicle Code section 26454.

⁸ See *Handbook for Brake Adjusters and Stations*, February 2003, page 19.

These are just a few examples of how the manuals/handbooks make reference to the applicable statutory and regulatory requirements for vehicle lighting and braking systems; and how stations and adjusters are referred to vehicle manufacturers' standards, specifications and recommended procedures for performing inspections, adjustments and repairs. However, in order to make this as clear as possible, the Bureau has modified the text of the proposed amendment of Section 3305. The modified text is intended to establish an order of precedence for the standards, specifications and procedures to be used by stations and adjusters in the inspection, adjustment and repair of vehicle lighting and braking systems for certification. Vehicle manufacturers' published standards, specifications and procedures are first in the order, with the Bureau's handbooks ranking last.

The handbooks rank as the last resource not because they are inferior, but because they do not contain the actual standards, specifications and procedures for performing inspections, tests and repairs. The handbooks are only intended to serve as a guide to the specific requirement of law that must be met before a certificate may be issued. The handbooks do specify what must be inspected and tested, but not how to perform the inspections and tests. Section 3305, as modified, should help to make this clear.

- b. Members of CalABC have significant concerns about the efficacy and accuracy of the manuals since they have not been consulted, nor are they aware that any other trade experts have been consulted, to determine the validity of the instructions printed in the manuals. Making each and every item contained in these manuals a regulatory requirement for the performance of brake and lamp inspections and repairs, especially without a thorough vetting of these items by trade experts, has the potential to put both consumers and licensees at risk of unprofessional, unnecessary, and outmoded transactions. For these reasons, CalABC asks the Bureau to withdraw this section of the proposed regulatory action.

This comment/recommendation was rejected because:

The *Handbook for Brake Adjusters and Stations*, February 2003, clearly states that the handbook is not all-inclusive; therefore, station owners and adjusters must use acceptable reference manuals or electronic media to obtain the necessary vehicle-specific technical data. It is the responsibility of the station owner and the adjuster to follow vehicle manufacturers' procedures when performing brake work and inspection procedures before issuing certificates of compliance or adjustment.

The *Handbook for Lamp Adjusters and Stations*, February 2003, clearly states; "This handbook does not instruct or illustrate how technicians should adjust headlamps. Technology changes from year to year; therefore, technicians should refer to vehicle manufacturers' detailed headlight aiming instructions for specific vehicles."

Both manuals have been thoroughly reviewed and critiqued by knowledgeable and experienced Bureau staff – most of whom are licensed adjusters themselves, the California Highway Patrol engineering staff, as well as a number of industry licensees

that may be categorized as “trade experts.” The industry licensees have previously served as volunteer Subject Matter Experts in the development of the Brake and Lamp Adjuster license examinations. In addition, the Bureau staff person who oversees the development, updating and editing of the manuals has himself personally overseen and performed more than 60,000 headlamp adjustment inspections, lamp functional inspections and cursory brake functional inspections. A great deal of time, effort and expertise has gone into the development of the manuals, in which industry representatives have been directly involved. In addition, the public comment period for this proposed action has afforded the industry an opportunity to thoroughly vet the manuals and, if warranted, to point out specific inconsistencies or inaccuracies. [See also comment 1. a., above.]

- c. The Bureau has not demonstrated the actual necessity for this proposed regulation. The Bureau states that specifying the procedures for inspecting and repairing brakes and lamps “will help to ensure vehicle owners’ confidence that their vehicles have been inspected, adjustments have been made and any necessary repairs have been performed to validate that their vehicles’ lamps and brakes are safe, comply with Vehicle Code requirements and meet vehicle manufacturers’ specifications.” The Bureau further states that the manuals “need to be incorporated by reference into regulation as official Bureau manuals to be followed when conducting brake and lamp inspections for the issuance of Certificates of Adjustment.” But the Bureau also states that it has been managing this program since “the early 1970s,” which means that for over thirty years the industry has been providing appropriate professional brake and lamp inspections and repairs without the need for regulation-mandated adherence to the Bureau’s manuals. The Bureau does not specify what has changed in the market place that necessitates imposing this onerous burden upon a profession clearly capable of following accepted trade standards without micro-management.

This comment/recommendation was rejected because:

Through the use of audit inspections, the Bureau has found that stations and adjusters are issuing brake and lamp certificates to vehicles that are not in compliance and have not been adequately inspected or tested. Lamp certificates have been issued to vehicles with burned out light bulbs and misadjusted headlamps. Brake certificates have been issued to vehicles with brake rotors that are out of vehicle manufacturer specifications, and to vehicles that are not actually driven in order to determine if the stopping distance complies with the Vehicle Code⁹.

Stations and adjusters clearly need the handbooks as an additional reference for the proper inspection and testing of a vehicle before the issuance of a certificate of compliance or adjustment. Pursuant to Government Code section 11340.5¹⁰, in order for

⁹ Vehicle Code section 26454.

¹⁰ Government Code section 11340.5 provides, in pertinent part, that “[n]o state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State ...”

these manuals to be used they must be adopted in regulation. [See also comment 1. a., above.]

- d. Incorporating the two manuals into the regulation would significantly hamper licensees' ability to comply with any subsequent manufacturers' required updates that may not conform to particular items in the manuals as incorporated. Updating the manuals would require burdensome regulatory action whose duration could put licensees in the position of being required either to violate the regulation in order to conform with updated trade standards or to perform repairs that violate trade standards in order to comply with regulation. The current practice of providing the manuals as "Bureau recommendations" rather than as legal mandates allows for their regular amendment and updating in a timely manner.

This comment/recommendation was rejected because:

The Bureau does not hold out its manuals to be or contain "accepted trade standards." Both the *Handbook for Lamp Adjusters and Stations*, February 2003, and the *Handbook for Brake Adjusters and Stations*, February 2003, contain numerous references to following the instructions, specifications and procedures of vehicle manufacturers in performing inspections, adjustments and repairs. They also make reference to applicable provisions of the Vehicle Code and Title 13 of the California Code of Regulations regarding requirements for lighting and braking systems on motor vehicles.

Furthermore, subsection (c) of Section 3316 and subsection (b) of Section 3321, both require stations to maintain current copies of the appropriate manuals, bulletins and instructions issued by vehicle and equipment manufacturers. Current regulations already require that stations have appropriate manuals for the vehicles they are inspecting and certifying. Section 3305, as modified, will clarify that vehicle and equipment manufacturer' standards, specifications and procedures take precedence. The proposed action will not result in stations and adjusters being required to "violate the regulation in order to conform with updated trade standards." Quite the contrary, the proposed action will make it clear that vehicle manufacturers' instructions, specifications and procedures (trade standards) are to be given precedence.

- e. The proposed regulation creates a significant adverse impact on business. Automobile manufacturers produce new makes and models of automobiles every year. Automotive engineers are always inventing new features in every facet of their products, including brakes and lamps. Incorporating the manuals into regulation could cause businesses to face a significant impact if they must refuse legitimate business because updated trade standards render mandates in the manuals obsolete or incomplete. The businesses would be legally deprived of providing service to these vehicles until regulatory action to update the manuals could be completed, which could take twelve months.

This comment/recommendation was rejected because:

The Bureau does not hold out its manuals to be or contain “accepted trade standards.” Both the *Handbook for Lamp Adjusters and Stations*, February 2003, and the *Handbook for Brake Adjusters and Stations*, February 2003, contain numerous references to following the instructions, specifications and procedures of vehicle manufacturers in performing inspections, adjustments and repairs. They also make reference to applicable provisions of the Vehicle Code and Title 13 of the California Code of Regulations regarding requirements for lighting and braking systems on motor vehicles.

Stations will not be required to turn away business as a result of the proposed action. If vehicle manufacturers’ standards are followed now, this proposed action would not change that. Stations and adjusters will continue to be responsible for performing inspections, adjustment and repairs in accordance with vehicle manufacturers’ instructions, specification and procedures in the issuance of certificates of compliance and adjustment. [See also comment 1., d., above.]

- f. The proposed regulation lacks clarity. The proposal fails to clarify the responsibility for determining the accepted trade standards presumably incorporated into the two manuals. CalABC contends that the requirements stated in B&P Code section 9884.7 leave the determination of “accepted trade standards” to the trade itself, i.e., the regulated businesses and their suppliers. Incorporating the manuals into the regulation and giving complying with them the force of law muddies the delineation of professional responsibility for the establishment and maintenance of accepted trade standards without proper justification.

This comment/recommendation was rejected because:

Please refer to comments 1. a., b., d. and e., above.

There were no further comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.

The following written comments/objections/recommendations were received during the 15-day public comment period regarding the modified language of the proposed action:

2. Marty Keller, Executive Director, California Automotive Business Coalition (formerly Automotive Repair Coalition), in oral testimony presented at the June 2, 2006 public hearing, and in a letter dated and received June 2, 2006, offered the following comments and recommendations:

- a. The proposed amendment of Section 3305 continues to provide for incorporation of the Bureau’s handbooks. The modified language appears to be an attempt to get around the objection to the incorporation of the handbooks by making compliance with their provisions optional. The language setting this up is so ambiguous that it is not clear whether brake and lamp professionals actually have a choice. It says that adjusters are to

perform their work “in accordance with the following, in descending order of [precedence], as applicable,” and then lists five standards and/or documents.

What does “in descending order of [precedence]” mean? It is totally unclear whether it means that the adjuster is required to meet all five requirements, or whether he may pick and choose one of the five. If he has an option does it mean that he must first comply with (a)(1), unless for some reason he cannot? Does it then mean that if he cannot comply with (a)(1) he must then try to comply with (a)(2), and so forth? If he does have a choice, how does the Bureau determine whether he did so in the preferred order? We are concerned that this ambiguity could lead to more capricious enforcement actions by Bureau officials.

This comment/recommendation was rejected because:

What this means is really quite simple. Each of the listed information sources is more authoritative than the next and takes precedence over those that follow. There are numerous sources of information available to stations and adjusters to assist and direct them in the performance of lamp and brake inspections, adjustments and repairs. The principal authority on vehicle lighting and braking systems is the manufacturers’ published service and repair manuals. Secondary to that would be current standards, specifications, procedures, directives, manuals, bulletins and instructions issued by vehicle and equipment or device manufacturers.

Assigning an order of precedence provides guidance to stations and adjusters as to where first to look for the appropriate specifications, instructions and procedures applicable to the vehicle being inspected and/or repaired. This also serves to resolve any conflict that may arise or exist between the specifications, instructions and procedures found in one category of resources and another. In other words, if the procedures found in an industry-standard reference manual published by nationally recognized repair information provider are in conflict with the procedures contained in the vehicle manufacturer’s service and repair manual, the manufacturer’s procedures shall prevail and must be followed. If, for some reason, a manufacturer’s service and repair manual does not contain the procedures the adjuster needs, the order of precedence lets the adjuster know where to look next.

The remainder of Mr. Keller’s August 30, 2006 comments either repeat or refer to previous comments, have been considered and addressed previously, do not specifically relate to the modified language and are not given further consideration here.

There were no further comments, objections or recommendations received within the 15-day public comment period regarding the modified language of the proposed action.